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15 INTERNATIONAL

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HUB LAW OFFICES

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF MARIN

18 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
19 INTERNATIONAL, a California not-for-profit)
20 religious corporation,) [CONSOLIDATED]
21)
22) PLAINTIFF'S FURTHER REPLY IN
23) SUPPORT OF MOTION FOR
24) SUMMARY ADJUDICATION OF
25) THE TWENTIETH CAUSE OF
26) ACTION OF PLAINTIFF'S SECOND
27) AMENDED COMPLAINT
28)
29) DATE: September 29, 1995
30) TIME: 9:00 a.m.
31) DEPT: 1
32)
33) TRIAL DATE: None set
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13 CHURCH OF SCIENTOLOGY)
14 INTERNATIONAL, a California not-for-profit)
15 religious corporation,)
16)
17) Plaintiff,
18)
19) vs.
20)
21) GERALD ARMSTRONG; DOES 1 through)
22) 25, inclusive,)
23)
24) Defendants.)
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1 **I. INTRODUCTION**

2 That's why I do not honor, cannot honor that [Settlement
3 Agreement].

4 * * *

5 It isn't only in response -- you also have to understand that the
6 settlement agreement by and of itself standing alone is
7 unenforceable -- is against public interest -- is illegal.

8 [Gerry Armstrong, Boulder Public Radio, August 31, 1995.]

9 In its moving papers, plaintiff Church of Scientology International ("plaintiff" or
10 "the Church") has demonstrated unequivocally its need for a strong, specific and
11 permanent injunction to specifically enforce its Agreement with Gerald Armstrong
12 ("Armstrong"). The Church has set forth nearly 50 instances since 1991 in which
13 Armstrong has deliberately breached the Agreement, daring plaintiff and this Court to
14 do something about it. Armstrong raises no substantive issue of fact contradicting
15 any of these breaches. [See, Arm. Sep.St., Nos. 11-85] Since this motion was filed,
16 Armstrong has filed a petition for bankruptcy, thus underscoring plaintiff's need for
17 injunctive relief: by dissipating the entire settlement proceeds of \$800,000,
18 Armstrong has made certain that the Church will be unable to obtain a monetary
19 remedy for his breaches.¹

20 In the brief which his returning counsel, Ford Greene, filed belatedly, opposing
21 this motion, Armstrong does not dispute the facts concerning any of the breaches
22 described in the moving papers; indeed, the breaches themselves are, almost
23 uniformly, admitted by Armstrong. Instead, Armstrong relies on a series of
24 arguments, all made previously in this case, and all rejected by multiple courts, in an
25 effort to invalidate the contract itself. These arguments improperly seek
26 reconsideration of decisions already made by this Court, the Los Angeles Court and
27 the Court of Appeal; further, with their inflammatory attack on the Church, its

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¹This Court will no doubt recall that Armstrong filed his bankruptcy petition one day
before the Court was due to rule on this then-pending motion.

1 counsel, its parishioners and its beliefs, they insult plaintiff and this Court alike. None
2 of them provide any reason why the injunction should not be granted exactly as
3 prayed.

4 Moreover, since filing for bankruptcy, Armstrong has again breached the
5 Agreement, by appearing on a radio program on August 31, 1995, and by appearing
6 and speaking at a demonstration outside the Church of Scientology of San Francisco
7 on September 9, 1995. [Evidence in Support of Additional Reply, Exhibit 1,
8 Declaration of Deborah Danos, and Exhibit A thereto; Exhibit 2, Declaration of
9 Jonathan Cole and Exhibit A thereto; Exhibit 3, Declaration of Laurie J. Bartilson and
10 Exhibit A thereto.] These additional breaches, and Armstrong's insistence, in the
11 face of all reason, that the Agreement is "unenforceable" or "illegal" demonstrate
12 graphically the need for permanent injunction exactly as requested by plaintiff.

13 **II. ARMSTRONG'S ATTACKS ON THE AGREEMENT ARE UNAVAILING**

14 **A. There Are No Provisions In the Contract Regulating The Church's** 15 **Speech Concerning Armstrong**

16 Armstrong begins this brief, like his companion brief, by asking that this Court
17 imply a new term into the contract, and then hold that the Church may not obtain
18 damages for breach of contract against Armstrong because it violated that term. This
19 same argument has been raised before, and rejected by, Judge Sohigian, when
20 plaintiff sought and obtained a preliminary injunction; by the court of appeal, when it
21 affirmed that order; and by this Court, in striking one of Armstrong's cross-
22 complaints. The issue, however, was firmly laid to rest on August 16, 1994, while
23 the case was still in Los Angeles. Armstrong had sued the Church in cross-complaint
24 for breach of contract, claiming that assorted "bad acts" of the church (the same
25 false and tired allegations he makes yet again today) were a "breach" of an implied
26 term of the settlement agreement, and justified his own breaches of that Agreement.
27 The Los Angeles Court granted the church summary adjudication of this claim.
28 Although Armstrong argued vehemently that the contract should be interpreted to

1 include a clause prohibiting the Church from commenting on Armstrong, the Court
2 held:

3 The Agreement terms are clear and unambiguous. [Armstrong]
4 understood the terms and signed it. The duties and obligations of the
5 Agreement are clearly stated. "Mutuality" and "reciprocal" duties cannot be
6 read into the unambiguous terms of the Agreement.

7 There are no provisions in the Agreement prohibiting the [Church] from
8 referring to [Armstrong] with the press or in legal pleadings or declarations.
9 [Armstrong's] beliefs as to what the Agreement should have said, its validity,
10 or what his attorney said or did to him are not relevant. The Agreement itself
11 acknowledges that no agreements or understandings have been made among
12 the parties aside from those set forth in the Agreement.

13 [Plaintiff's Request for Judicial Notice, Exhibit E, emphasis supplied].

14 This legal holding is the law of the case. Armstrong made no effort to seek
15 reconsideration at the time that the Los Angeles Court issued this ruling, and his
16 attempts to persuade this Court, more than one year later, to overrule this earlier,
17 binding order are improper. Code of Civil Procedure Section 1008. It has already
18 been adjudicated that the Agreement contains no provisions which prevent the
19 Church from referring to Armstrong. Armstrong's present argument that he would
20 not have been foolish enough to sign the "one-sided" Agreement, and accept more
21 than half a million dollars, if he had known that the Church could really hold him to
22 his promises is just the same old argument, re-hashed. It should be rejected, along
23 with Armstrong's weighty load of irrelevant and inadmissible "evidence"
24 demonstrating his opinion that the Church is "bad."

25 Armstrong's additional strident argument that he entered into the Agreement
26 based on a (presumably verbal) additional promise of the Church that it would cease
27 to practice "fair game" is just another version of this same rejected theme. That the
28 Church made no such promise is patently clear: any doctrine concerning "fair game"
was cancelled by the Church in 1968, and the Church certainly did not practice "fair
game" against Armstrong or anyone else at the time of the settlement in 1986. The
Church most emphatically did not promise to "stop" doing something it had never

1 started. Moreover, both this Court and the Los Angeles Court have found the
2 Agreement to be a valid, integrated contract, which contains all of its terms in the
3 writing itself. Armstrong could not have reasonably relied on any verbal promise.
4 Indeed, when he happily signed the Agreement on videotape, he swore that he
5 understood that it contained the **complete** agreement of the parties.

6 Finally, Armstrong's current protestations that he would not have breached the
7 Agreement (and, presumably, would stop breaching the Agreement) but for the
8 Church's speech concerning him are belied by his **own admissions**. Less than one
9 month ago, Armstrong appeared on a radio broadcast in Boulder Colorado. During
10 that broadcast, he had this to say about his motivation for his repetitive breaches:

11 **ARMSTRONG:** I was brought back into the legal battle by Scientology's
12 actions --

13 **ANNOUNCER:** Okay.

14 **ARMSTRONG:** That's why I do not honor, cannot honor that --

15 **ANNOUNCER:** That settlement? What you're saying essentially is that the
16 Scientologists violated that settlement first -- this is just in
17 response?

18 **ARMSTRONG:** It isn't only in response -- you also have to understand that
19 the settlement agreement by and of itself standing alone is
20 unenforceable -- is against public interest -- is illegal.

21 [Exhibit 1(A) to Plaintiff's Additional Evidence, at 15] During the broadcast,
22 Armstrong makes plain that his real purpose in appearing on the radio station is to
23 paint a false and unflattering picture of his former faith for all of the station's
24 listeners.

25 In short, Armstrong breaches the Agreement because he enjoys any opportunity
26 to attack the Church. Not content to preach the Christianity he professes to follow,
27 he wishes to slander and destroy his former faith. This is a right which he gave up in
28 1986.

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1 **B. Armstrong Cannot Avoid Summary Adjudication With Tired Claims Of**
2 **Duress, Menace Or Fraud**

3 Next, Armstrong once again urges this Court to refuse to enforce the Agreement
4 because he claims that he was subjected to coercion by his own lawyer, Michael
5 Flynn, and another settling party, in 1986. Armstrong urged this same defense to
6 Judge Sohigian, who found in 1992 that Armstrong had not persuasively shown any
7 duress. He repeated his arguments to the Court of Appeal, who reiterated in 1994
8 that the record did not support his claims. He repeated the arguments yet again to
9 this Court in January, and this Court held resoundingly that he had stated no claim of
10 duress or menace. [Ex. C Request for Judicial Notice] Armstrong offers no new
11 evidence to this Court this time around, beyond yet another contradictory declaration
12 from none other than Gerald Armstrong.² He again repeats in his own declarations a
13 recitation of the bad advice which he allegedly got from Flynn that convinced him to
14 sign the Agreement.

15 Moreover, Armstrong still offers no evidence from any corroborating witness as
16 to any of his claims, and his assertion that he is unable to obtain such evidence is
17 absurd. The records of this case disclose that plaintiff attempted to depose Michael
18 Flynn in this action in March, 1992. Armstrong and Greene brought a motion to
19 quash the subpoena, and prevented that deposition from going forward, although it
20 would certainly have afforded them the full opportunity to obtain Mr. Flynn's
21 testimony concerning his alleged "coercion" of Armstrong. In February 1995,
22 Armstrong noticed Flynn's deposition himself. Just a few days before the deposition
23 was to occur, without explanation, Armstrong withdrew the notice of deposition. If
24 Flynn were going to corroborate Armstrong's bizarre tale, Armstrong was perfectly
25 capable of lawfully obtaining the Mr. Flynn's testimony. His decision to silence Mr.

26 _____
27 ² The Church has moved to strike this and other declarations in their entirety for
28 various reasons. See, plaintiff's objections to Armstrong's evidence and motion to strike.

1 Flynn instead demands the obvious inference that Mr. Flynn would not corroborate
2 Armstrong's description of the events at the time of the settlement in the slightest.

3 Even if Armstrong's allegations are assumed to be true, however, they still do not
4 assert a defense of duress as to plaintiff. Armstrong does not offer evidence that the
5 Church subjected him to duress or coercion. He claims that his lawyer and other
6 litigants convince him to sign the Agreement. Armstrong cites no authority, and
7 there is none, holding that a party may set aside a settlement agreement because his
8 attorney strongly urged him to settle for nearly one million dollars.

9 Armstrong's claim of fraud is just as frivolous. As noted in Part II A, supra, the
10 Church made no promise concerning "fair game." Indeed, Armstrong provides no
11 evidence at all of such a promise, simply asserting that his lawyer, Flynn, told him
12 that the Church would make such a promise. Flynn's words, reported by Armstrong,
13 are inadmissible hearsay. Moreover, the Agreement states clearly on its face that it
14 contains the full and complete agreement of the parties, and that no party is relying
15 on any additional oral or written promise. The videotape shows that Armstrong read
16 this clause in the Agreement, and claimed to understand it, when he signed the
17 Agreement, just prior to taking \$800,000 from the Church. No evidence of "fraud"
18 by the Church appears on this record.

19 Finally, the fact that Armstrong accepted, retained and continues to retain the
20 benefit of his bargain precludes him from seeking to set aside the Agreement under
21 any of these theories. Under California law, even where an agreement is the product
22 of duress, coercion, undue influence or fraud, it is voidable, not void. Civil Code §§
23 1566, 1567. This distinction means that the allegedly wronged party, in this case
24 Armstrong, must act in a timely and affirmative manner to rescind the voidable
25 contract. The allegedly wronged party can also ratify a voidable contract by his or
26 her subsequent conduct, as Armstrong has done in this case. Civil Code § 1588.
27 Armstrong's continued acceptance and enjoyment of the benefits of the transaction,

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1 well beyond the time he signed the agreement, as a matter of law constitutes
2 consent to and ratification of all the obligations of the agreement. Civ.Code § 1589.
3 See, e.g., Union Pacific R.Co. v. Zimmer (1948) 87 Cal.App.2d 524, 197 P.2d 363.

4 Under these circumstances, duress, menace and fraud are not affirmative
5 defenses to plaintiff's breach of contract claims, and Armstrong has provided no new
6 evidence to convince this Court otherwise.

7 **C. The Agreement Does Not Violate Public Policy, Obstruct Justice, Or Violate**
8 **Anyone's First Amendment Rights**

9 Armstrong, once again, asks this Court to void the Agreement on the ground that
10 it violates public policy, obstructs justice or violates Armstrong's first amendment
11 rights. Four superior Court judges and the Court of Appeal have considered
12 Armstrong's arguments concerning the validity of the Agreement, and all four have
13 rejected them, in this case:

14 ○ The first rejection of Armstrong's arguments came on March 20, 1992. On
15 that date, plaintiff's motion for preliminary injunction came on for hearing by Judge
16 Dufficy, of the Marin Superior Court. Armstrong made the same arguments to Judge
17 Dufficy which he makes here concerning the Agreement. Although Judge Dufficy
18 granted Armstrong's motion to change venue to Los Angeles, he heard argument
19 concerning the injunction for nearly an hour, reviewed all of the voluminous paper
20 filed by Armstrong, and issued a temporary restraining order upholding the provisions
21 of the Agreement while the transfer was pending;

22 ○ The second rejection of Armstrong's arguments came on May 28, 1992, when
23 Judge Sohigian took evidence and heard argument for two days before issuing the
24 preliminary injunction. Armstrong again raised all of the arguments concerning the
25 Agreement which he makes in his opposition to the instant motion. Judge Sohigian
26 specifically found that plaintiff had shown a substantial probability of success on the
27 merits, and that the Agreement did not violate public policy [Ex. P to Request for
28 Judicial Notice];

1 ○ The third rejection of Armstrong's arguments occurred on July 2, 1992.
2 Armstrong demurred to the complaint herein, urging the Court to find that the
3 Agreement could not be enforced, and raising yet again all of the arguments he
4 makes here. Judge Horowitz rejected Armstrong's demurrer;

5 ○ The fourth rejection came from the Court of Appeal on May 15, 1994. The
6 Second District Court of Appeal considered all of Armstrong's arguments, and upheld
7 Judge Sohigian's injunction;

8 ○ The most recent rejection came from this Court when, on January 27, 1995,
9 this Court found that Armstrong had "fail[ed] to raise a triable issue regarding
10 obstruction of justice/suppression of evidence. The settlement agreement expressly
11 does not prohibit defendant from disclosing information pursuant to subpoena or
12 other legal process. . . ." [Request for Judicial Notice, Ex. C]

13 Not only have five judges already held, in this case, that the Agreement's
14 provisions are entirely legal, two other courts have upheld similar provisions in
15 agreements entered into with other individuals with whom Church of Scientology
16 entities settled in 1986. In Wakefield v. Church of Scientology of California (11th
17 Cir. 1991) 938 F.2d 1226, 1227, settlement terms requiring confidentiality, which
18 were substantially similar to the terms which plaintiff seeks to enforce here, were
19 upheld by the district court and a criminal contempt citation was recommended by
20 the magistrate judge for violations. These decisions were discussed with approval by
21 the Eleventh Circuit Court of Appeals. Similarly, in McLean v. Church of Scientology
22 of California (11th Cir. 1991) (Slip Op., Ex. H, at 2, 3, 6) the Church obtained a
23 permanent injunction against Nan McLean from the district court for violating, inter
24 alia, similar confidentiality provisions of a settlement agreement which was upheld by
25 the Court of Appeals. These decisions - most in this very case - lay waste to
26 Armstrong's arguments that the Agreement's provisions are illegal, void or against
27 public policy. The only courts that have considered these or similar agreements have

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1 easily found them to be enforceable.

2 **D. Armstrong's Religious Arguments Are Improper**

3 Armstrong devotes a large portion of his brief, and almost all of his improperly-
4 filed "evidence," to a discussion of his claimed religious beliefs, conferences with
5 God, what he interprets/thinks/believes are plaintiff's philosophies or doctrines. None
6 of these matters are at issue in this breach of contract case; none have any place in a
7 brief before this Court. This Court has already told Armstrong emphatically that, ""
8 For Armstrong to once again attempt to place this Court in the center of a (self-
9 conceived) religious dispute is unconscionable.

10 Plaintiff declines to make this courtroom a battlefield on which religious
11 competing religious theories are the casualties. Nothing in the Agreement prevents
12 Armstrong from believing what he will, talking to God daily, or hating the Church
13 vehemently. All it prevents him from doing is that which he agreed to refrain from
14 doing: giving voice to his hate. The Agreement is not a religious document, nor need
15 the Court consult any religious scripture, runes or entrails in order to interpret it. It is
16 a legal contract, conceived of by lawyers, intended to end a garden variety dispute.
17 Armstrong is bound by it regardless of his religious beliefs, then or now.

18 **III. RECENT EVENTS DEMONSTRATE THE NEED FOR AN INJUNCTION PRECISELY**
19 **AS PRAYED BY THE CHURCH**

20 Since plaintiff filed this motion for summary adjudication, Armstrong has acted to
21 make it the necessity of the injunction even more clear. First, on April 19, 1995, one
22 day before this Court was to decide this motion, Armstrong filed a petition for
23 bankruptcy, claiming that he had dissipated all of his assets. In light of this claimed
24 insolvency, the Church cannot possibly have an adequate monetary remedy at law.
25 Second, on August 31, 1995, obviously certain that he now had "nothing to lose,"
26 Armstrong voluntarily appeared on a public radio broadcast in Boulder, Colorado, in
27 which he spoke at length about his claimed Scientology knowledge and experiences.

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1 [Evidence in Support of Additional Reply, Exhibit 1, Ex. 1(A).] Finally, on September
2 9, 1995, Armstrong appeared on the street in front of the San Francisco Church,
3 where he spoke about his claimed Scientology knowledge and experiences to
4 everyone gathered or passing on the street. [Exhibit 2, 2(A), 3, 3(A)]

5 Armstrong's latest escapades make it clear that he is not going to stop breaching
6 the Agreement merely because he owes the Church money, or just because five
7 courts have told him that the contract is enforceable. Judge Sohigian's injunction
8 provided relief from the exact activities in which Armstrong was engaged in 1992,
9 but it is not sufficient to restrain him from his current round of gleeful public
10 appearances. The liquidated damages clause is certainly no further deterrent to
11 Armstrong; he believes that by filing for bankruptcy, he has extricated himself from
12 the sticky and uncomfortable situation of having to give back some of the money he
13 took. Only the full injunctive relief that plaintiff has requested can possibly begin to
14 give plaintiff any measure of relief from Armstrong's deliberate misconduct.

15 **IV. CONCLUSION**

16 Armstrong, by his recent actions, has helped the Church to demonstrate the need
17 for a permanent injunction precisely as requested. He admits his wholesale and
18 unceasing breaches of the Agreement, and has demonstrated by his bankruptcy that
19 liquidated damages cannot make plaintiff whole. None of the defenses raised amount
20 to any issue of material fact, and injunctive relief is a matter to be determined by the
21 Court as a matter of law. Armstrong must be permanently enjoined, as requested in
22 plaintiff's proposed order of injunction.

23 Dated: September 25, 1995

Respectfully submitted,

24 MOXON & BARTILSON

25
26 By: 

Laurie J. Bartilson

27 Andrew H. Wilson
28 WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On September 25, 1995, I served the foregoing document described as PLAINTIFF'S FURTHER REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE TWENTIETH CAUSE OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT on interested parties in this action, by sending a true copy by hand delivery to:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

and by U.S. Mail to:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 25, 1995 at Los Angeles, California.

Print or Type Name

Signature